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Nebraska

# Senate File No. 4

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## Blue Sky Law



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the State Senate

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## Blue Sky Law

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### A BILL

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For an Act to regulate and supervise associations, companies, corporations, and persons selling or negotiating for the sale within the state of Nebraska of stocks, bonds, or securities, and prescribing penalties for the violation thereof.

**Be it Enacted by the People of the State of Nebraska:**

Section 1. The words and phrases used in this Act and in proceedings pursuant hereto, shall, unless the same be inconsistent with the context, be construed as follows:

1. "Dealer" shall include every foreign and domestic corporation, copartnership, joint stock company, declaration of trust association, and every other character of association, and every individual who sells or attempts to sell or negotiate for the sale within the State of Nebraska of any stocks, bonds, or other securities of any kind or character whatsoever.

2. "Foreign Corporations" shall include every corporation organized outside of the State of Nebraska.

3. "Domestic Corporations" shall include every corporation organized under and pursuant to the laws of the State of Nebraska.

4. "Company Selling Its Own Securities" shall include every character of company, incorporated or otherwise, selling its own stocks or securities by itself, or through any character of stock promotion scheme, or through either or both of such methods.

5. "Securities" shall include corporate stocks and bonds and all other securities of whatsoever character other than those specifically exempted in this Act.

6. "Persons" shall include natural persons, artificial persons such as corporations, and all aggregate organizations of whatsoever character.

Sec. 2. Every "dealer," every "company selling its own securities," and every person or company of any character, incorporated or otherwise, who shall sell in this state, or negotiate for the sale of, to any person in this state, any stocks, bonds, or other securities, except such as are hereinafter excepted, or, in the case of any corporation or association, any interest in itself or in any other company, shall be subject to this Act.

Sec. 3. Companies, associations, and individuals engaged in the business pursuits enumerated in this section and the transactions hereinafter mentioned shall be exempt from the application of this Act:

A. 1. Building and loan companies organized in Nebraska.

2. Dealers, when sales are to other dealers or to corporations.

B. This Act shall not include within its purview sales of stock in Nebraska corporations already in existence, and in Nebraska corporations hereafter created, but which have been in existence one year or more at the time of such sale, and in cor-

porations of other states which have been in existence five years or more at the time of such sale, the majority of stockholders, directors, and officers of which were at the time of commencing business, and are at the date of the approval of this Act, citizens of the State of Nebraska, nor individual sales of securities owned by the seller prior to the taking effect of this Act and purchased by such seller prior to March 1, 1913, when no commission or other compensation of any character whatsoever is to move in the transaction, and no publicity is used in accomplishing the sale.

The Commission may, however, require any person or corporation making sales under this subdivision, to appear and make a satisfactory showing that such person or corporation making or attempting to make any sale, has in fact come within the purview of this exception, and the burden shall be on such person or corporation to satisfy the Commission of such fact.

C. Transactions involving sales of real estate situate within the State of Nebraska, and sales of real estate situate without the State of Nebraska, when made by the owner thereof while resident in Nebraska or when made by one other than the owner, shall not be deemed within the prohibitions of this act; provided, however, that in all cases relating to the sale or contract for sale of any real estate or interest therein outside this state, the State Conservation and Soil Survey, when called upon so to do by any interested party, shall, and it is hereby made its duty to make such investigation as it shall deem necessary, and report thereon; and in case it is found upon such investigation that the person, persons, or corporation offering or advertising such real estate for sale is doing a fraudulent business, such information shall be given to the Attorney General of this State, whose duty it shall be to prosecute said person, persons, or corporation as provided by law.

Sec. 4. The following securities are exempt from the operation of this Act, namely:

- a. Government bonds.
- b. State bonds.
- c. County bonds.
- d. Bonds and warrants of municipal and public corporations or any district thereof.
- e. The stock of national banks.
- f. The stock of state banks after they have come under the control of the Nebraska State Banking Board.
- g. The stock of insurance companies authorized to do business in Nebraska.
- h. Real estate and real estate mortgages.
- i. The stock of trust companies after they have come under the control of the State Auditor.
- j. All securities that are legal investments for New York or Massachusetts savings banks.
- k. Securities of companies the stocks of which have shown an earned dividend record for at least five years, and the actual earnings of which are twice the interest charges.
- l. The securities which have been accepted in the listed departments or the stock exchange of New York, Philadelphia, Chicago, and Boston, issued by corporations the statements of which are published in standard manuals such as Poor's and the Corporation Service.
- m. All securities that have been issued by authority of the Nebraska State Railway Commission.



n. All securities sold by bona fide recognized stock brokers on fractional percentages as a commission.

Sec. 5. The enforcement of this Act and all of its provisions is hereby committed to the Nebraska State Railway Commission, which is hereby authorized and empowered to execute the same in accordance with the provisions hereof.

Sec. 6. The Nebraska State Railway Commission shall be authorized to employ such clerks as may be required for the proper conduct of the business imposed upon the Commission by the provisions of this Act at such compensation as the Commission shall determine.

Sec. 7. In addition to the powers herein elsewhere enumerated, the Commission shall have, under the provisions of this Act, the following powers:

a. To issue permits for one year to such associations, companies, corporations, and persons as comply with the requirements of this Act; provided, all permits shall recite in bold type that the Commission in no wise recommends the securities for sale, and that detailed information in regard to the securities to be offered for sale under such permit is on file in the office of the State Railway Commission for public inspection and information.

b. To collect all fees and penalties herein provided for and pay them into the state treasury.

c. To deny permits where, in the judgment of the Commission, the securities offered for sale do not promise a fair return.

d. To expend from the fees hereunder received a reasonable portion in informing and advising the people of the State of the Commission and the working thereof.

e. To require, in so far as is practicable, all persons, corporations, and associations receiving permits hereunder to adopt similar bookkeeping methods.

f. To furnish investors and prospective purchasers with all available facts and information, at any time, without cost.

g. To revoke any permit granted for any infraction of this Act, or failure to comply with the provisions hereof, or when, in the judgment of the Commission, such action is necessary or desirable for the protection of the interests of the public.

h. To have examinations of the affairs of the applicants for permits made at the expense of the applicants, and in connection herewith to call for any information deemed requisite.

i. To take all steps requisite and appropriate for the carrying out of the provisions of this Act, including any affirmative action necessary to enforce the penalties herein provided for.

Sec. 8. An appeal may be had by any person, corporation, or association dealing with the Commission, from any order or action thereof, to the district court of the county in which the applicant lives, or has his or its principal place of business, in the State of Nebraska.

Sec. 9. Any action brought against any of the persons enumerated in this Act, under the provisions hereof, may be brought in the county where the cause of action, or some part thereof, arose, or in the county where any contract or portion of a contract entered into has been violated or is to be performed.

Sec. 10. All fees herein provided for shall be collected by the Commission, and by it shall be turned into the state treasury, and all fees so turned into the state treasury are hereby reappropriated to the Commission for the purpose of paying all salaries and expenses for carrying this Act into effect. All money actually



and necessarily paid out by the Commission to any clerk or deputy appointed under this Act, as salaries, or any money actually and necessarily paid out by the Commission, or by any deputy or clerk appointed under this Act for traveling or incidental expenses, shall be paid by the State Treasurer out of such fees upon the State Auditor's warrants, to be issued upon vouchers containing an itemized account of such salaries or expenses.

Sec. 11. Before offering or attempting to sell any securities to any person or persons, except to a "dealer" as herein defined, or to a corporation, or offering to do any business whatever in this state or with a person residing in this state, excepting that of preparing the documents hereinafter required, every "company selling its own securities" shall comply with the following requirements:

a. No person, corporation, or company, of any character whatsoever, having complied with the requirements of this Act, shall transact or offer to transact any business during any time after the adoption of any change in its articles of organization, by-laws, or plan of doing business, or after the making of any change in the form of its applications or contracts, before transcripts thereof shall have been filed with the Commission.

b. Receive a permit from the Commission which shall be for one year, and which shall be issued only upon the payment of the fee for the examination and report, which shall be twenty-five dollars for the first year, and ten dollars per year thereafter, and a permit for each agent, the fee for issuing which shall be one dollar per year.

c. With the application for permit, file, under oath, an itemized statement of financial condition, copy of contracts, and other information, in conformity to forms, and at the same time, under oath, file a statement of the general plans of business, copies of securities to be offered for sale, and copies of organization papers.

d. Annually, on or before the first day of March, file with the Commission, under oath, a balance sheet and an income account for the year ending the thirty-first day of December preceding, and upon request of the Commission, at any time, file a statement of any information demanded.

e. When the company of which stocks, bonds, or securities are offered has not been in operation for more than six months, the permit issued shall so indicate on its face, and all advertising used for the promotion of sale of such stocks, bonds, or securities shall also clearly and specifically so state on the face thereof, and all proposed or expected earnings shall be clearly defined as being proposed or expected only.

f. When the commission or bonus to be received, directly or indirectly, on the sale of any stocks, bonds, or securities, is to exceed fifteen per cent, then in such event, such fact shall be set forth on the face of the permit issued, and on the face of the stock sold, and in a written statement filed with the Commission before any attempted sale of such securities.

g. The par value of all stocks sold or offered for sale must be one hundred dollars.

h. Every corporation or association of whatsoever character, organized outside of the State of Nebraska, shall file, with the application for permit, a copy of the laws under which it was organized.

i. No corporation or association of any character whatsoever, which receives a permit under this Act, may declare or issue a dividend in any amount whatsoever, unless such dividend has in fact been earned by the corporation or association.

j. No advertisement, pamphlet, circular, or other document shall be issued, circulated, or delivered within this state, by any person or company of any character, authorized under this Act,

or by his or its agents, unless the same shall bear a serial number, and a copy thereof shall first have been filed with the Commission, and no such advertisement, pamphlet, circular, or other document shall be issued, if its issuance has been forbidden by the Commission.

Sec. 12. Before offering or attempting to sell any securities to any person or persons, except to a "dealer" as herein defined, or to a corporation, or offering to do any business whatever in this state, or with any person residing in this state, excepting that of preparing the documents hereinafter required, every "dealer" shall comply with the following requirements:

a. File, with the application for a permit, in writing and under oath, a statement showing that the "dealer" is solvent, a statement of the general plan of doing business, and a copy of the organization papers.

b. Receive a permit from the Commission which shall be for one year, and which shall be issued only upon the payment of the fee for the examination and report, which shall be twenty-five dollars for the first year and ten dollars per year thereafter, and a permit for each agent, the fee for issuing which shall be one dollar per year; provided, however, that the Commission shall at all times have the right and authority to refuse or cancel the privilege of the "dealer" to sell any of his or its offerings.

c. File in writing and under oath, with the Commission, on the first day of each month, a list of the offerings of the "dealer."

d. When the commission or bonus to be received, directly or indirectly, on the sale of any stocks, bonds, or securities, is to exceed fifteen per cent, then in such event, such fact shall be set forth in the written statement listing the security with the Commission, and on the face of the permit issued, and on the face of the stock sold.



e. Every advertisement, pamphlet, circular, or other document, issued, circulated, or delivered within this state by any "dealer" authorized to do business under this Act shall bear a serial number, and a copy thereof shall be filed, simultaneously with its issuance, with the Commission.

Sec. 13. It shall be unlawful for any person, corporation, or association of any character whatsoever, to sell or to attempt to sell in this state, or to sell or to attempt to sell to any person residing in this state, any character of securities without first obtaining a permit as herein provided; and when any person, corporation, or association of any character whatsoever has obtained a permit hereunder, it shall be unlawful for any such person, corporation, or association and for any agent or representative thereof, to make any false or fraudulent statements, orally or in writing, to the Commission or to any one else, concerning any security offered for sale or alleged to have been sold; and any person, corporation, or association of any character whatsoever, and any agent thereof, knowingly or wilfully violating any provision of this Act, shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, or shall be imprisoned for not less than thirty days or more than two years, or both; provided, that when any such false or fraudulent statement is made by the agent or representative of any of the persons, corporations, or associations hereinbefore mentioned, such agent or representative shall be equally liable to the penalties herein prescribed, as though he were himself the principal, and in addition thereto the principal shall be liable to be assessed the fine prescribed in the same manner as though he or it had committed the acts herein prohibited; provided, however, no action to rescind any contract of sale made in contravention of the provisions of this act shall be maintainable unless the same is instituted within one year.

Sec. 14. Every foreign "dealer," every foreign "company selling its own securities," and every non-resident "person,"

foreign corporation, or association applying for a permit as herein provided for, shall, before receiving such permit, file a power of attorney, making the Secretary of the Commission the attorney of said party, for the service of all process which may be issued against said party, which power of attorney shall be irrevocable.

Sec. 15. No person shall participate in, receive, or accept, directly or indirectly, any part or promise of any part, of any commission, bonus, or reward of any "dealer," "company selling its own securities," or "company," or any promoter or agent for the sale of any character of securities whatsoever, not exempted by this act, unless the name of such person, the fact of his interest, and the amount thereof, in such commissions or rewards shall appear upon the contract of subscription, and a statement thereof in writing shall be filed with the Commission within ten days of the date of the sale contract. The omission of such statement from the subscription contract, or the failure to file the statement thereof with the Commission, or the failure to do both of said things, shall, ipso facto, forfeit the permit of the seller and his principal. In addition, every company or person who sells or represents having sold any security of a company not having been in existence one year to any one or more persons, for a given price, and to another person or persons, such security for a lower price, unless authorized so to do by the Commission, shall be liable in a civil suit to the person or persons and each of them who paid the larger price in amounts equal to the difference between the maximum price paid by the particular person and the least price paid.

Sec. 16. Should the courts declare any section, or any part of a section, of this Act unconstitutional or unauthorized by law, or in conflict with any other section or part or subdivision of a section or provision of this Act, then such decision shall affect only the section or part or subdivision of a section, or provision so declared to be unconstitutional, and shall not affect any other section or any other part or subdivision of a section or provision or part of this Act. It is further expressly provided that each

section and each part or subdivision of a section herein, so far as an inducement for the passage of this bill is concerned, is independent of every other section and every other part or subdivision of a section, and not any section or any part or subdivision of a section is an inducement for the enactment of any other section or part or subdivision of a section.

I hereby certify that the above and foregoing is a true, correct, and compared copy of Senate File No. 4 as enacted by the thirty-third session of the Legislature of Nebraska.

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Secretary of the Senate.













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